

**REMARKS**

The invention provides for, *inter alia*, herbicidal compositions comprising at least one post-emergence herbicide and a carrier material from the group consisting of aerogels, high molecular-weight polyglycols and polymers based on acrylic acid. The invention further provides for the use of a post-emergence herbicide together with certain auxiliaries for pre-emergent applications, i.e. prior to the emergence of the undesirable harmful plants.

Claims 14, 15, 17 and 18 are pending, and claim 18 has been found to be allowable.

However, claims 14, 15 and 17 are finally rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Narayanan et al. (U.S 5,231,070, "Narayanan") and Sanders et al. (U.S 5,635,447, "Sanders").

In response, Applicants maintain that since neither Narayanan nor Sanders teaches or enables the use of post-emergence herbicide for use as a pre-emergence herbicide in a pre-emergence application, the references cannot anticipate the present claims and request reconsideration and withdrawal of the rejection.

Specifically, the main objectives of Narayanan are to provide a leach inhibiting chemical and chemical composition which is broadly effective in preventing or inhibiting downward movement of various plant treating materials (see column 1, lines 63 to 66), and which prevents or minimizes the movement of toxic chemicals into the soil (see column 1, line 69 to column 2 line 1), and further which permits more efficient use of a crop treating agent in reduced amounts (see column 2, lines 5 to 7). These objectives are addressed by providing herbicidal compositions comprising a wide range of herbicides and an N-alkenyl homopolymer or copolymer according to claim 1 of Narayanan.

According to Narayanan, herbicidal compositions comprising a pre-emergence herbicide are used under pre-emergence conditions and herbicidal compositions comprising a post-emergence herbicide are used under post-emergence conditions. There is no teaching in Narayanan of the use of post-emergence herbicides under pre-emergent conditions.

The Examiner argues that nowhere in Narayanan can it be found that post-emergence herbicide cannot be applied pre-emergently. It is said in the Action that Applicant “states that Narayanan clearly teaches this, but Applicant does not point to a location in Narayanan’s specification for this teaching.” (Office Action at page 2).

In response, Applicants respectfully point out for the sake of clarification, that it is not their position that Narayanan teaches that a post-emergence herbicide **cannot** be applied pre-emergently. However, Applicants maintain that the teaching of Narayanan is completely silent with regard to the use of post-emergence herbicides as pre-emergence herbicides for pre-emergent application, when applying them with auxiliaries as in instant invention.

As to Sanders, the main objectives here are to provide a composition which enhances the effectiveness of certain classic types of herbicides (see column 1, lines 34 to 41), achieves enhanced effectiveness of herbicides by enhancing the ability of the herbicide to be absorbed by the exterior cell membrane layers of weeds (see column 1, line 42 to 47), and improves herbicide penetration into the weed tissue in adverse weather conditions, such as drought or extended periods of low rainfall (see column 1, lines 52 to 54).

These objectives are addressed in Sanders by providing herbicidal compositions comprising an herbicide and a small amount of water soluble polyaspartic acid (see to claim 1 of Sanders). According to Sanders, herbicidal compositions comprising a pre-emergence herbicide are used under pre-emergent conditions and herbicidal compositions comprising a post-

emergence herbicide are used under post-emergent conditions. Once again, this document fails to anticipate the use of post-emergence herbicides for pre-emergent applications.

Applicants urge that neither Narayan nor Sanders are properly cited as Section 102(b) references. A two-prong inquiry must be satisfied in order for a Section 102 rejection to stand. First, the prior art reference must contain **all** of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990). A reference contains an enabling disclosure if a person of ordinary skill in the art could have combined the description of the invention in the prior art reference with his own knowledge of the art to have placed himself in possession of the invention. *See In re Donohue*, 226, U.S.P.Q. 619, 621 (Fed. Cir. 1985).

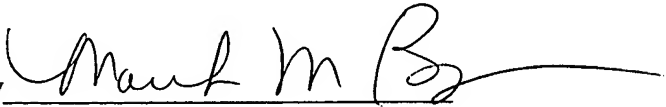
Neither Nayaranan nor Sanders contains all the elements of the claimed invention; Narayan and Sanders each fails to contain an enabling disclosure such that one of skill in the art could have combined the reference teachings with his own knowledge, and thereby have used a post-emergence herbicide as a pre-emergence herbicide in pre-emergent applications. Thus, since Nayaranan and Sanders each fail to contain all the elements of the claimed invention, and also fail to provide an enabling disclosure, neither Narayan nor Sanders anticipate the present invention.

In view of the foregoing, Applicants respectfully request consideration and entry of the instant paper, and reconsideration and withdrawal of the final refusal. In the alternative, Applicants respectfully request consideration and entry of the instant paper, since it places this application into better condition for purposes of appeal.

It is believed that no fees are required by the instant submission. However, if any fees are required, or if any overpayment has been made, please charge Deposit Acct. No. 50-0320.

Respectfully submitted,

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